

Abstract

The subject-matter of this thesis is the transfer of a right as security. The thesis is focused mainly on the history of the transfer of a right as security, its regulation in Civil code 2012 and it highlights the fundamental changes compared to its regulation in Civil code 1964. The regulation of the transfer of a right as security underwent considerable changes in Civil code 2012. However, the usage of this instrument in practice, compared to other security instruments, is not so common. The fault is primarily with the insufficient regulation in the Civil code 1964 which has led to extensive discussions on this topic in the past as well as restrictions by the Supreme Court. The main aim of this thesis is to evaluate the benefits of the regulation of the transfer of a right as security in Civil code 2012 as compared to 1964. Introductory chapters are dedicated to general issues of the law of obligations, focusing on changes of the basic terms. Other chapters include historical development of the institute and evaluate the applicability of the existing jurisprudence in light of the Civil code 2012. Following chapters deal with the issues of formal and content requirements for the contract on transfer of a right as security. Next chapters describe the process of realization of the transfer of right as security including its termination. The thesis includes also assessment of the regulation of transfer of a right as security in other laws. This thesis also assesses risks of the transfer of a right as security for the debtor focusing on consumer protection and protection of a weaker party. The thesis therefore contains recommendations to the contracting parties (especially to the debtor) to conclude a contract on the transfer of right as security after a thorough evaluation of the risks and (if possible) with assistance of expert specialized in relevant legislation and decision-making practice of the courts. One of the last chapters deals with the legislation and use of transfer of a right as security in Germany and also includes a comparison with the Czech law. By way of conclusion, the thesis evaluates the contribution of Civil code 2012 and its impact on the usage of the instrument of transfer of right as security in practice.